

SSB 5692 - H AMD 477

By Representative Santos

ADOPTED 04/15/2005

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** This chapter may be known and cited as the
4 tax refund anticipation loan act.

5 NEW SECTION. **Sec. 2.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "Borrower" means a taxpayer who receives the proceeds of a
8 refund anticipation loan.

9 (2) "Department" means the department of financial institutions.

10 (3) "Director" means the director of the department of financial
11 institutions.

12 (4) "Facilitator" means a person who receives or accepts for
13 delivery an application for a refund anticipation loan, delivers a
14 check in payment of refund anticipation loan proceeds, or in any other
15 manner acts to allow the making of a refund anticipation loan.

16 "Facilitator" does not include a bank, thrift, savings association,
17 industrial bank, or credit union, operating under the laws of the
18 United States or this state, an affiliate that is a servicer for such
19 an entity, or any person who acts solely as an intermediary and does
20 not deal with a taxpayer in the making of the refund anticipation loan.

21 (5) "Lender" means a person who extends credit to a borrower in the
22 form of a refund anticipation loan.

23 (6) "Person" means an individual, a firm, a partnership, an
24 association, a corporation, or other entity.

25 (7) "Refund anticipation loan" means a loan borrowed by a taxpayer
26 from a lender based on the taxpayer's anticipated federal income tax
27 refund.

28 (8) "Refund anticipation loan fee" means the charges, fees, or
29 other consideration imposed by the lender for a refund anticipation

1 loan. This term does not include any charge, fee, or other
2 consideration usually imposed by the facilitator in the ordinary course
3 of business for nonloan services, such as fees for tax return
4 preparation and fees for electronic filing of tax returns.

5 (9) "Refund anticipation loan fee schedule" means a listing or
6 table of refund anticipation loan fees charged by the facilitator or
7 the lender for three or more representative refund anticipation loan
8 amounts. The schedule shall list separately each fee or charge
9 imposed, as well as a total of all fees imposed, related to the making
10 of refund anticipation loans. The schedule shall also include, for
11 each representative loan amount, the estimated annual percentage rate
12 calculated under the guidelines established by the federal truth in
13 lending act, 15 U.S.C. Sec. 1601 et seq.

14 (10) "Taxpayer" means an individual who files a federal income tax
15 return.

16 NEW SECTION. **Sec. 3.** (1) No person may individually, or in
17 conjunction or cooperation with another person act as a facilitator
18 unless that person is:

19 (a) A tax preparer or works for a person that engages in the
20 business of tax preparation;

21 (b) Accepted by the internal revenue service as an authorized IRS
22 e-file provider; and

23 (c) Registered with the department as a facilitator. The director
24 may prescribe the registration form.

25 (2) A person is registered as a facilitator by providing the
26 department, on or before December 31st of each year with:

27 (a) A list of authorized IRS e-file providers in the state of
28 Washington for the current tax filing year; and

29 (b) A thirty-five dollar processing fee for each authorized e-file
30 provider on the list.

31 (3) After the December 31st deadline, a facilitator may amend the
32 registration required in subsection (2) of this section to reflect
33 additions or deletions of office locations or e-file providers
34 authorized by the internal revenue service.

35 (4) The department shall make available to the public a list of all
36 facilitators registered under this section.

1 (5) This section does not apply to a person doing business as a
2 bank, thrift, savings association, industrial bank, or credit union,
3 operating under the laws of the United States or this state, an
4 affiliate that is a servicer for such an entity, or any person who acts
5 solely as an intermediary and does not deal with a taxpayer in the
6 making of the refund anticipation loan.

7 (6) This chapter shall preempt and be exclusive of all local acts,
8 statutes, ordinances, and regulations relating to refund anticipation
9 loans. This subsection shall be given retroactive and prospective
10 effect.

11 NEW SECTION. **Sec. 4.** (1) For all refund anticipation loans, a
12 facilitator must provide clear disclosure to the borrower prior to the
13 borrower's completion of the application. The disclosure must contain
14 the following:

15 (a) The refund anticipation loan fee schedule; and

16 (b) A written statement, in a minimum of ten-point type, containing
17 the following elements:

18 (i) That a refund anticipation loan is a loan, and is not the
19 borrower's actual income tax refund;

20 (ii) That the taxpayer can file an income tax return electronically
21 without applying for a refund anticipation loan;

22 (iii) The average times according to the internal revenue service
23 within which a taxpayer who does not obtain a refund anticipation loan
24 can expect to receive a refund if the taxpayer's return is (A) filed
25 electronically and the refund is directly deposited to the taxpayer's
26 bank account or mailed to the taxpayer, and (B) mailed to the internal
27 revenue service and the refund is directly deposited to the taxpayer's
28 bank account or mailed to the taxpayer;

29 (iv) That the internal revenue service does not guarantee that it
30 will pay the full amount of the anticipated refund and it does not
31 guarantee a specific date that a refund will be deposited into a
32 taxpayer's financial institution account or mailed to a taxpayer;

33 (v) That the borrower is responsible for repayment of the loan and
34 related fees in the event that the tax refund is not paid or paid in
35 full;

36 (vi) The estimated time within which the loan proceeds will be paid
37 to the borrower if the loan is approved;

1 (vii) The fee that will be charged, if any, if the borrower's loan
2 is not approved; and

3 (viii) The borrower's right to rescind the refund anticipation loan
4 transaction as provided in section 5 of this act.

5 (2) The following additional information must be provided to the
6 borrower of a refund anticipation loan before consummation of the loan
7 transaction:

8 (a) The estimated total fees for obtaining the refund anticipation
9 loan; and

10 (b) The estimated annual percentage rate for the borrower's refund
11 anticipation loan, using the guidelines established under the federal
12 truth in lending act (15 U.S.C. Sec. 1601 et seq.).

13 NEW SECTION. **Sec. 5.** A borrower may rescind a loan, on or before
14 the close of business on the next day of business, by either returning
15 the original check issued for the loan or providing the amount of the
16 loan in cash to the lender or the facilitator. The facilitator may not
17 charge the borrower a fee for rescinding the loan or a refund
18 anticipation loan fee if the loan is rescinded but may charge the
19 borrower the administrative cost of establishing a bank account to
20 electronically receive the refund.

21 NEW SECTION. **Sec. 6.** It is unlawful for a facilitator of a refund
22 anticipation loan to engage in any of the following activities:

23 (1) Misrepresent a material factor or condition of a refund
24 anticipation loan;

25 (2) Fail to process the application for a refund anticipation loan
26 promptly after the consumer applies for the loan;

27 (3) Engage in any dishonest, fraudulent, unfair, unconscionable, or
28 unethical practice or conduct in connection with a refund anticipation
29 loan;

30 (4) Arrange for a creditor to take a security interest in any
31 property of the consumer other than the proceeds of the consumer's tax
32 refund and the account into which that tax refund is deposited to
33 secure payment of the loan; and

34 (5) Offer a refund anticipation loan that, including any refund
35 anticipation loan fee or any other fee related to the loan or tax
36 preparation, exceeds the amount of the anticipated tax refund.

1 NEW SECTION. **Sec. 7.** Any person who knowingly and willfully
2 violates this chapter is guilty of a misdemeanor and shall be fined up
3 to five hundred dollars for each offense.

4 NEW SECTION. **Sec. 8.** The legislature finds that the practices
5 covered by this chapter are matters vitally affecting the public
6 interest for the purpose of applying the consumer protection act,
7 chapter 19.86 RCW. A violation of this chapter is not reasonable in
8 relation to the development and preservation of business and is an
9 unfair or deceptive act in trade or commerce and an unfair method of
10 competition for the purpose of applying the consumer protection act,
11 chapter 19.86 RCW.

12 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act constitute
13 a new chapter in Title 19 RCW."

14 Correct the title.

EFFECT: Requires registration with the Department of Financial
Institutions. Allows a borrower to rescind the loan. Prohibits
certain acts by a facilitator.

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